MONTANA LEGISLATIVE HISTORY

Chapter 231 19 74

Bill H 1009 S _____ Original bill & history ✓ C

H. Committee on Natural Resources			S. Committee on Judiciary		
Hearing Date(s)	2-9	___C	Hearing Date(s)	2-28	___C
	_____	___C		_____	___C
	_____	___C		_____	___C
	_____	___C		_____	___C
Date Out	2-9	___C	Date Out 3-6		

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

House BILL NO. 1,009

INTRODUCED BY Bardanouve, Devine

70-803

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTION 70-803, R.C.M. 1947, TO INCLUDE THE COMMENCEMENT OF EMINENT DOMAIN PROCEEDINGS WITHIN THE MEANING OF "COMMENCE TO CONSTRUCT" IN THE UTILITY SITING ACT; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 70-803, R.C.M. 1947, is amended to read as follows:

"70-803. Definitions. The following words, when used in this act, shall have the following meanings unless otherwise clearly apparent from the context:

(1) the word "department" means the department of natural resources and conservation.

(2) the word "board" means the board of natural resources and conservation.

(3) the words "utility facility" or "facility" mean:

(a) any energy-generating and conversion plant and associated facilities

(i) designed for, or capable of, generating at fifty

INTRODUCED BILL

(50) megawatts of electricity or more or any addition thereto (except pollution control facilities approved by the department of health and environmental sciences added to an existing plant) having an estimated cost in excess of two hundred fifty thousand dollars ($250,000), or

(ii) designed for, or capable of, producing one hundred million (100,000,000) cubic feet of gas per day or more or any addition thereto having an estimated cost in excess of two hundred fifty thousand dollars ($250,000), or

(iii) designed for, or capable of, producing fifty thousand (50,000) barrels of liquid hydrocarbon products per day or more or any addition thereto having an estimated cost in excess of two hundred fifty thousand dollars ($250,000), or

(iv) designed for or capable of enriching uranium minerals;

(b) an electric transmission line and associated facilities of a design capacity of thirty-four and one-half (34.5) kilovolts or more, except that the following transmission lines and associated facilities shall be subject to certain exceptions under the act:

(i) a transmission line and associated facilities with a design capacity of sixty-nine (69) kilovolts or less and which will be constructed above ground for a distance of ten (10) miles or less shall not be considered a utility

HB 1009

facility within the definitions of this act,

(ii) a transmission line and associated facilities with a design capacity of one hundred sixty-one (161) kilovolts or less and which will be constructed underground for a distance of five (5) miles or less shall not be considered a utility facility within the definitions of this act,

(iii) a transmission line or associated facilities of a design capacity of one hundred sixty-one (161) kilovolts or less which does not meet the requirements of subsections (i) and (ii) of this subsection shall be subject to the specific time review requirements for transmission lines in section 6, subsection (1) [70-806(1)] and section 7, subsection (1) [70-807(1)] of this act if the proposed length of the transmission line will not exceed thirty (30) miles,

(iv) unless specifically covered by subsections (i), (ii) or (iii) of this subsection, the construction of all transmission lines and associated facilities shall be subject to the two (2) year time requirement of section 6, subsection (1) [70-806(1)], and the six hundred (600) day requirement of section 7, subsection (1) [70-807(1)],

(v) the provisions of subsections (i) and (ii) of this subsection shall not be construed as authorizing the simultaneous construction of two (2) or more transmission lines serving the same community or customer which would,

when constructed separately, come within the exceptions of subsections (i) and (ii);

(c) a gas or liquid transmission line and associated facilities designed for, or capable of, transporting gas or liquid hydrocarbon products from a gasification or liquefaction facility of the size indicated in subsections (a) (ii) and (a) (iii) of this section.

(4) the words "associated facilities" include, but are not limited to, transportation links of any kind, aqueducts, diversion dams and any other device or equipment associated with the production, or delivery of the energy form produced by a facility.

(5) the words "commence to construct" mean any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a utility facility, but do not include changes needed for temporary use of sites or routes for nonutility purposes, or uses in securing geological data, including necessary borings to ascertain foundation conditions. The words do include the commencement of eminent domain proceedings under title 93, chapter 99, R.C.M. 1947, for land or rights of way upon which a utility facility may be constructed.

(6) the word "municipality" means any county or municipality within this state.

(7) the word "person" includes any individual, group,

firm, partnership, corporation, co-operative, association, government subdivision, government agency, local government, or other organization.

(8) the words "public utility" or "utility" mean any person engaged in any aspect of the production, storage, sale, delivery or furnishing of heat, electricity, gas, or energy in any form for ultimate public use.

(9) "certificate" means the certificate of environmental compatibility and public need issued by the board and required for the construction or operation of any facility."

Section 2. This act is effective on its passage and approval.

-End-

HB 1009

Natural Resources--4 COMMITTEE

43rd Legislative Assembly

Bill No.	Subject Matter	Date In	Hearing Date	Comments	Date Out	Committee Action	Final Action
HB892 Select	State system of pastoral and scenic rivers, to be administered by local conservation districts.	Jan.17	Feb. 7 (7:30 PM)		Feb. 18	DO NOT PASS	Killed in Committee
HB 923 Shelden	Confidentiality provision of the hard rock mining act.	Jan. 17					
HB 996 Fagg	Promote conservation and efficient use of energy in the state bldg. code	Jan. 18	Feb. 12		Feb.18	DO NOT PASS	Killed in Committee
HB 1005 Holmes	Act revising and updating the "Coal Mining Code"	Jan. 18	Feb. 14		Feb.14	DO PASS	
HB 1006 Bardanouve	Act to create a state geothermal energy admin. agency and council.	Jan. 18	Feb. 9		Feb.18	DO NOT PASS	Killed in Committee
HB 1009 Bardanouve	Includes the commencement of eminent domain proceedings within the utility siting act.	Jan. 18	Feb. 9		Feb.9	DO PASS	

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Saturday, February 9, 1974

The Natural Resources committee met in room 437 at 10:35 a.m. with Chairman Shelden presiding and a quorum present.

HB 474 Rep. Swanberg said he would like to make an amendment to this bill that had been passed on Feburary 7. He moved that the amendment which created a new section 5, section 26-1507, R.C.M. 1947 in its subsection (3) that the phrase "provided that no equipment described in subsection (1) of this section will be working in the channel" be omitted. The motion passed unanimously with Walborn, Quilici and Schye absent.

Rep. Swanberg moved that the bill do pass as further amended. This motion also passed unanimously with the above absent.

HB 1006 Rep. Bardanouve, the chief sponsor, stated this bill would create a vehicle or agency to search for, regulate and develop the use of geothermal energy in our state. A council would be created composed of five members and their primary job would be compiling an inventory of all potential sources of this energy and the feasibility of using what is found. There would be cooperation with all other forms of energy producers as the idea isn't to replace all other producers and sellers of energy. A facility would be built only if it were economically and environmentally sound to do so--there could be adverse effects on the water as it could contain dissolved chemicals, etc. This facility if built should return sufficient revenue to offset all costs and rates should be similiar to those charged by other energy producers. Any profit would go to the general fund. Mr. Bardanouve felt the lines 18 to 20 on page 6 could be omitted--this deals with selling directly to residential consumers as he didn't feel there would be any left over and the intent of this is not to go directly to the land owner.

He stated one of the main considerations is that federal money is available to search for these energy potentials and why shouldn't the state of Montana avail themselves of this opportunity as well as the private companies. He stated, however, this should remain state directed and not federally controlled.

OPPONENTS

Bob Corette, Montana Power Co., stated this places all phases of geothermal energy--exploration, development, production and distribution--under state control. He stated the state does not have finances to direct the exploration and development much less run the distribution end. He said geothermal belongs to the surface owner of the land and so the bill is unconstitutional. He said private industry has many leases already signed with private individuals and this source of energy would also be handled by private industries which have the necessary finances to explore and develop.

Jack K. Letts, Thermax Company from Denver, a New York based geothermal company, stated he felt the state would have a real battle with the Bureau of Land Management as he said 70 to 80% of land they were interested in is on federal land. He suggested the state stick to something sure and get royalties from leases as they do for oil leases. He stated this geothermal research is in the embryo state, that 10-20 million dollars have been spent in the past year just exploring and a good

means of locating it still hasn't been discovered. So, he said, research is going to be tremendously expensive and out of reach for a state. He suggested putting geothermal under the state water board. He said Marysville is an example of hot rock near the surface but how to make use of it isn't yet known. He felt the bill was also unconstitutional and stated the geothermal groups opposed the bill.

Peter C. Pauly, Montana-Dakota Utilities, was the next speaker. He said this proposed a radical departure from the manner in which the resources of the state have been managed in the past. He said they opposed the bill.

Giles E. Walker, AMAX Exploration, Inc., stated he supported the statements of the other gentlemen. He said they have leases in the Marysville area. A copy of his testimony is exhibit 1.

Donald Finn, managing director Geothermal Energy Institute, San Francisco, sent a telegram opposing, as he was unable to be present. This is exhibit 2.

During the rebuttal, Rep. Bardanouve stated that small costs mean small return(like we would get for leasing our land) and large costs could mean large returns. He said one of the best recommendations for the bill was the presence of the gentleman from Denver. Mr. Bardonouve stated we have tremendous resources in Montana and we have and are giving them away to foreign companies and getting very little in return.

Questions were asked by the committee. It was brought out that there are two kinds of geothermal energy--hot air generating from hot rocks and steam from hot water. Major oil companies are looking into geothermal as the exploration is based on deep drilling similar to oil. Mr. Letts said they were using the micro earthquake developed by the CIA in southeast Asia to determine troop movements. Mr. Letts stated they have 15 prime targets in the west and if they lose in Montana they will hope to make up for it in Nevada. Who owns the geothermal energy--surface owner or state--seemed to be a lack of agreement on that. Mr. Letts emphasized that geothermal is not ground water--that it is a depletable resource down 10 to 15 thousand feet. Mr. Bardanouve stated there was nothing unconstitutional in the state entering into a contract with a private land owner.

HB 1009, Rep. Bardanouve, the chief sponsor, stated this was a short amendment to the plant siting act stating that condemnation proceedings for lines should not begin before a permit is issued for a utility. He said utility companies can go out and condemn and then come into the agency and say it will be a real hardship if they can't build.

Bob Corrette, Montana Power, stated the bill is good and should be passed.

Gary Wicks, Natural Resource Dept., stated they supported the bill.

Mr. Shelden opened the meeting to a consideration of HB 1009. Rep. Lundgren moved that HB 1009 do pass. The motion passed unanimously with Rep. Schye, Walborn, and Quilici absent.

Chairman Shelden announced the meeting would recess now (12 noon) and reconvene at adjournment for a hearing of HB 1010 and consideration of bills that have been heard.

The Natural Resources committee reconvened in room 436 at 4 p.m. with chairman Shelden presiding and quorum present.

HB 1010 Rep. Bardanouve, the chief sponsor, stated this bill was drawn up by the environmental quality council and further amends the plant siting act to include geothermal energy.

Ward Shanahan, attorney for Burlington Northern, requested the bill be amended on page 5, lines 5 to 9 by striking these lines.

Robert T. Quinn, Montana Power, stated they concurred with Mr. Bardanouve and supported the bill.

Ted Doney, department of Natural Resources, didn't feel their department was the proper one to handle this job that the state lands would perhaps be better.

Questions were asked by the committee.

Chairman Shelden opened the meeting to a consideration of the following bills:

HB 795, Rep. Lucas went through suggested amendments to the bill. These are attached and exhibit 3. Rep. Lucas moved that HB 795 as so amended do pass. Motion carried unanimously by those present (absent were Johnston, Lien, Quilici, Schye, Swanberg and Walborn)

HB 882, Rep. Bradley moved that HB 882 do pass. Motion carried unanimously except for those absent which are same as above.

HB 865, The question of why ten people being able to petition was brought up. Roger Tippy was called on to discuss the matter further. Members of the committee requested this bill be held over. Chairman Sheldon said a decision would need to be reached on Tuesday.

HB 1010, Rep. Huennekens moved that we strike out the language objected to by Mr. Shanahan and as amended the bill do pass. Motion carried unanimously by those present, those absent were the same as above.

HB 550; Rep. Huennekens went through the amendments to the new amended bill which is exhibit 4. Rep. Stoltz and Rep. Ainsworth, members of the subcommittee with Rep. Huennekens, also added a few comments.

Rep. Colberg moved that in section 7 of the new amended bill following

House Journal

Paired: Baucus, Fagg, Forsgren, Gunderson, Kimble, Mercer, Aye; Jones, Kvaalen, Lien, Lockrem, Rolfe, Ulmer, Nay.

Excused: Gerke, Haines, Hall, Zimmer. Total 4.

Absent or not voting: Ainsworth. Total 1.

House Bill No. 958 was passed by the following vote:

Ayes: Aageson, Baeth, Bardanouve, Barrett, Baucus, Bennetts, Bradley, Brand, Campbell, Castles, Colberg, Cotton, Cox, Driscoll, Edland, Ellerd, Fasbender, Fleming, Flynn, Glennen, Greely, Gunderson, Hageman, Hager, H. Harper, R. Harper, Healy, Hodges, Holmes, Huennekens, Kosena, Lee, Lombardi, Lucas, Lund, Lynch, McKittrick, Mann, Manuel, Marbut, Mehrens, Menahan, Murphy, Norman, Prevost, Quilici, Regan, Roberts, Schepens, Schye, Shelden, Staigmiller, Stoltz, Swanberg, Tierney, Towe, Turman, Ulmer, Warfield, Watt, Yardley. Total 61.

Noes: Asbjornson, Bell, Brown, Burnett, Clemow, East, Galt, Holtz, Hubing, Jacobsen, Johnston, Kendall, Kessner, Kolstad, Kvaalen, Laas, Lien, Lundgren, Marks, Olson, Seifert, Selstad, Smith, Stephens, Turner, Walborn. Total 26.

Excused: Gerke, Haines, Hall, Jones, Kimble, Rolfe, Zimmer. Total 7.

Absent or not voting: Ainsworth, Fagg, Forsgren, Halvorson, Lockrem, Mercer. Total 6.

House Bill No. 988 was passed by the following vote:

Ayes: Aageson, Asbjornson, Baeth, Bardanouve, Barrett, Baucus, Bell, Bennetts, Bradley, Brand, Brown, Campbell, Castles, Clemow, Colberg, Cotton, Cox, Driscoll, East, Edland, Ellerd, Fasbender, Fleming, Flynn, Galt, Glennen, Greely, Gunderson, Hageman, Hager, Halvorson, H. Harper, R. Harper, Healy, Hodges, Holmes, Holtz, Hubing, Huennekens, Jacobsen, Johnston, Kendall, Kessner, Kolstad, Kosena, Kvaalen, Laas, Lien, Lombardi, Lucas, Lund, Lundgren, Lynch, McKittrick, Mann, Manuel, Marbut, Marks, Mehrens, Menahan, Murphy Norman, Olson, Prevost, Quilici, Regan, Roberts, Schepens, Schye, Seifert, Selstad, Shelden, Smith, Stephens, Stoltz, Swanberg, Tierney, Towe, Turman, Turner, Ulmer, Walborn, Warfield, Yardley. Total 84.

Noes: Burnett. Total 1.

Excused: Gerke, Haines, Hall, Jones, Kimble, Rolfe, Zimmer. Total 7.

Absent or not voting: Ainsworth, Fagg, Forsgren, Lee, Lockrem, Mercer, Staigmiller, Watt. Total 8.

House Bill No. 990 was passed by the following vote:

Ayes: Aageson, Asbjornson, Baeth, Bardanouve, Baucus, Bennetts, Bradley, Brand, Brown, Campbell, Clemow, Colberg, Cotton, Driscoll, Fasbender, Fleming, Glennen, Greely, Gunderson, Hageman, Halvorson, H. Harper, R. Harper, Healy, Hodges, Holmes, Holtz, Huennekens, Johnston, Kolstad, Kosena, Kvaalen, Laas, Lee, Lombardi, Lucas, Lynch, McKittrick, Mann, Marbut, Mehrens, Menahan, Murphy, Norman, Prevost, Quilici, Regan, Roberts, Schepens, Shelden, Staigmiller, Stephens, Stoltz, Swanberg, Tierney, Towe, Turman, Turner, Ulmer, Watt, Yardley. Total 61.

Noes: Barrett, Bell, Burnett, Cox, East, Edland, Ellerd, Galt, Hager, Hubing, Jacobsen, Kendall, Kessner, Lien, Lund, Lundgren, Manuel, Marks, Mercer, Olson, Seifert, Selstad, Smith, Walborn, Warfield. Total 25.

Paired: Kvaalen, Aye; Mercer, Nay.

Excused: Gerke, Haines, Hall, Jones, Kimble, Rolfe, Zimmer. Total 7.

Absent or not voting: Ainsworth, Castles, Fagg, Flynn, Forsgren, Lockrem, Schye. Total 7.

House Bill No. 1009 was passed by the following vote:

Ayes: Aageson, Asbjornson, Baeth, Bardanouve, Barrett, Baucus, Bell, Bennetts,

Bradley, Brand, Brown, Campbell, Castles, Clemow, Colberg, Cotton, Cox, Driscoll, East, Edland, Ellerd, Fleming, Flynn, Galt, Glennen, Greely, Gunderson, Hageman, Hager, Halvorson, H. Harper, R. Harper, Healy, Hodges, Holmes, Holtz, Hubing, Huennekens, Jacobsen, Johnston, Kendall, Kessner, Kolstad, Kosena, Kvaalen, Laas, Lee, Lien, Lombardi, Lucas, Lund, Lundgren, Lynch, Mann, Manuel, Marbut, Marks, Mehrens, Menahan, Murphy, Norman, Olson, Prevost, Quilici, Regan, Roberts, Rolfe, Schepens, Schye, Seifert, Selstad, Shelden, Smith, Staigmiller, Stephens, Stoltz, Swanberg, Tierney, Towe, Turman, Turner, Ulmer, Walborn, Warfield, Watt, Yardley. Total 86.

Noes: Burnett, Mercer. Total 2.

Paired: Rolfe, Aye; Mercer, Nay.

Excused: Gerke, Haines, Hall, Jones, Kimble, Zimmer. Total 6.

Absent or not voting: Ainsworth, Fagg, Fasbender, Forsgren, Lockrem, McKittrick. Total 6.

House Bill No. 1045 was passed by the following vote:

Ayes: Aageson, Asbjornson, Baeth, Bardanouve, Barrett, Baucus, Bennetts, Bradley, Brand, Brown, Colberg, Cotton, Cox, Driscoll, Fagg, Fasbender, Fleming, Flynn, Glennen, Greely, Gunderson, Hageman, Hager, Halvorson, R. Harper, Healy, Hodges, Holmes, Huennekens, Kolstad, Kosena, Kvaalen, Laas, Lee, Lombardi, Lucas, Lund, Lynch, McKittrick, Mann, Marbut, Marks, Mehrens, Menahan, Murphy, Norman, Olson, Prevost, Quilici, Regan, Roberts, Schepens, Schye, Seifert, Shelden, Staigmiller, Stephens, Stoltz, Swanberg, Towe, Turman, Watt, Yardley. Total 63.

Noes: Bell, Burnett, Campbell, Castles, Clemow, East, Edland, Ellerd, H. Harper, Holtz, Hubing, Jacobsen, Johnston, Kendall, Kessner, Lien, Lundgren, Manuel, Selstad, Smith, Tierney, Turner, Ulmer, Walborn, Warfield. Total 25.

Paired: Fagg, Aye; Johnston, Nay.

Excused: Gerke, Haines, Hall, Jones, Kimble, Rolfe, Zimmer. Total 7.

Absent or not voting: Ainsworth, Forsgren, Galt, Lockrem, Mercer. Total 5.

House Bill No. 1058 was passed by the following vote:

Ayes: Baeth, Bardanouve, Barrett, Baucus, Bennetts, Bradley, Brand, Brown, Campbell, Clemow, Colberg, Cotton, Cox, Driscoll, Edland, Ellerd, Fasbender, Fleming, Flynn, Glennen, Greely, Gunderson, Hageman, Halvorson, H. Harper, R. Harper, Healy, Hodges, Holmes, Huennekens, Jacobsen, Kendall, Kessner, Kosena, Kvaalen, Laas, Lee, Lien, Lombardi, Lucas, Lund, Lynch, McKittrick, Manuel, Marbut, Mehrens, Menahan, Murphy, Norman, Olson, Prevost, Quilici, Regan, Roberts, Schepens, Shelden, Smith, Staigmiller, Stephens, Stoltz, Swanberg, Tierney, Towe, Turman, Turner, Ulmer, Walborn, Warfield, Watt. Total 69.

Noes: Aageson, Asbjornson, Bell, Burnett, Castles, Hager, Holtz, Hubing, Johnston, Kolstad, Lundgren, Mann, Seifert, Selstad. Total 14.

Excused: Gerke, Haines, Hall, Jones, Kimble, Rolfe, Zimmer. 7.

Absent or not voting: Ainsworth, East, Fagg, Forsgren, Galt, Lockrem, Marks, Mercer, Schye, Yardley. Total 10.

House Bill No. 1068 was passed by the following vote:

Ayes: Aageson, Asbjornson, Baeth, Bardanouve, Barrett, Baucus, Bell, Bennetts, Bradley, Brand, Brown, Burnett, Campbell, Clemow, Colberg, Cotton, Cox, Driscoll, East, Edland, Ellerd, Fasbender, Flynn, Galt, Glennen, Greely, Gunderson, Hageman, Halvorson, H. Harper, R. Harper, Healy, Hodges, Holmes, Holtz, Hubing, Huennekens, Jacobsen, Johnston, Kendall, Kessner, Kolstad, Kosena, Kvaalen, Laas, Lee, Lien, Lombardi, Lucas, Lund, Lundgren, Lynch, McKittrick, Mann, Manuel, Marbut, Marks, Mehrens, Menahan, Murphy, Norman, Olson, Prevost, Quilici, Regan, Roberts, Schepens, Schye, Seifert, Selstad, Shelden, Smith, Staigmiller, Stephens, Stoltz, Swanberg, Tierney, Towe, Turman, Ulmer, Walborn, Warfield, Watt, Yardley. Total 84.

43RD LEGISLATIVE SESSION

COMMITTEE ON JUDICIARY

HOUSE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
999	2/16	3/1,3/6	3/6					3/6	
1003	2/21	3/1,3/6	3/6				3/6		
1009	2/15	2/28,3/6	3/6				3/6		
1016	2/22	2/26,3/6,7	3/7					3/7	
1017	2/22	2/27,3/6,7	3/7					3/7	
1021	2/22	2/26	2/26				2/26		
1024	2/25	3/1,4,6	3/6						3/6
1026	2/18	3/1	3/1				3/1		
1035	2/21	3/1,3/7	3/7						3/7
1041	2/14	3/4, 3/7	3/7						3/7
1054	2/4	2/28	2/28						2/28
1060	2/5	2/22	2/22				2/22		
1073	2/16	2/26	2/26					2/26	
1080	2/27	3/5	3/5						3/5
1085	2/16	3/5	3/5						3/5
1090	3/4	3/6	3/6						3/6
1101	2/22	2/28, 3/6	3/6,7					3/7	

(Use Separate Sheet for Senate House Bills and Resolutions)

House BILL NO. 1,009

INTRODUCED BY Bardanouve, Driscoll

70-803

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTION 70-803, R.C.M. 1947, TO INCLUDE THE COMMENCEMENT OF EMINENT DOMAIN PROCEEDINGS WITHIN THE MEANING OF "COMMENCE TO CONSTRUCT" IN THE UTILITY SITING ACT; AND PROVIDING AN EFFECTIVE DATE."

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(2) the word "board" means the board of natural resources and conservation.

(3) the words "utility facility" or "facility" mean:

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(i) designed for, or capable of, generating at fifty

THIRD READING

(50) megawatts of electricity or more or any addition thereto (except pollution control facilities approved by the department of health and environmental sciences added to an existing plant) having an estimated cost in excess of two hundred fifty thousand dollars ($250,000), or

(ii) designed for, or capable of, producing one hundred million (100,000,000) cubic feet of gas per day or more or any addition thereto having an estimated cost in excess of two hundred fifty thousand dollars ($250,000), or

(iii) designed for, or capable of, producing fifty thousand (50,000) barrels of liquid hydrocarbon products per day or more or any addition thereto having an estimated cost in excess of two hundred fifty thousand dollars ($250,000), or

(iv) designed for or capable of enriching uranium minerals;

(b) an electric transmission line and associated facilities of a design capacity of thirty-four and one-half (34.5) kilovolts or more, except that the following transmission lines and associated facilities shall be subject to certain exceptions under the act:

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facility within the definitions of this act,

(ii) a transmission line and associated facilities with a design capacity of one hundred sixty-one (161) kilovolts or less and which will be constructed underground for a distance of five (5) miles or less shall not be considered a utility facility within the definitions of this act,

(iii) a transmission line or associated facilities of a design capacity of one hundred sixty-one (161) kilovolts or less which does not meet the requirements of subsections (i) and (ii) of this subsection shall be subject to the specific time review requirements for transmission lines in section 6, subsection (1) [70-806(1)] and section 7, subsection (1) [70-807(1)] of this act if the proposed length of the transmission line will not exceed thirty (30) miles,

(iv) unless specifically covered by subsections (i), (ii) or (iii) of this subsection, the construction of all transmission lines and associated facilities shall be subject to the two (2) year time requirement of section 6, subsection (1) [70-806(1)], and the six hundred (600) day requirement of section 7, subsection (1) [70-807(1)],

(v) the provisions of subsections (i) and (ii) of this subsection shall not be construed as authorizing the simultaneous construction of two (2) or more transmission lines serving the same community or customer which would,

when constructed separately, come within the exceptions of subsections (i) and (ii);

(c) a gas or liquid transmission line and associated facilities designed for, or capable of, transporting gas or liquid hydrocarbon products from a gasification or liquefaction facility of the size indicated in subsections (a) (ii) and (a) (iii) of this section.

(4) the words "associated facilities" include, but are not limited to, transportation links of any kind, aqueducts, diversion dams and any other device or equipment associated with the production, or delivery of the energy form produced by a facility.

(5) the words "commence to construct" mean any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a utility facility, but do not include changes needed for temporary use of sites or routes for nonutility purposes, or uses in securing geological data, including necessary borings to ascertain foundation conditions. The words do include the commencement of eminent domain proceedings under title 93, chapter 99, R.C.M. 1947, for land or rights of way upon which a utility facility may be constructed.

(6) the word "municipality" means any county or municipality within this state.

(7) the word "person" includes any individual, group,

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firm, partnership, corporation, co-operative, association, government subdivision, government agency, local government, or other organization.

(8) the words "public utility" or "utility" mean any person engaged in any aspect of the production, storage, sale, delivery or furnishing of heat, electricity, gas, or energy in any form for ultimate public use.

(9) "certificate" means the certificate of environmental compatibility and public need issued by the board and required for the construction or operation of any facility."

Section 2. This act is effective on its passage and approval.

-End-

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE SENATE
February 28, 1974

The meeting was called to order by Senator McKeon, chairman, at 11 a.m. in Room 402 of the Capitol Building.

The committee discussed the following bills:

HB 965
HB 1009
HB 1054
HB 1101

HB 965--Witnesses appearing on the bill:
John Driscoll, District 22
Steve Charter, Broadview Landowners Assn., Billings
Ted J. Doney, Dept. Natural Resours
Paul Smith, Montana Stockgrowers Association
Bob Corette, Montana Power Company
Lester Loble II, Montana Dakota Utilities
Gene Phillips, Pacific Power and Light
Jim Burnham, Mountain Bell

Representative Driscoll, sponsor, said that the private land owner should be publicly informed and assured before his land is condemned, that government requirements are met. He said this was not an unusual requirement.

Mr. Charter says there have been a number of conflicts between the landowners and the highway and utilities companies. He said the Montana Power lines will condemn land without notice, and which results in a condemnation suit. The state of Montana should not allow condemnation of land without applying for a certificate. He said regoratory measures should be adopted to insure that the law is compatible.

Mr. Doney said this bill would resolve the problem under the Water Use Act and the Utility Citing Act. He said that appropriations have threatened eminent domain prior to obtaining a certificate. They wanted to make sure that the condemnation was not premature until it was approved by their department.

Mr. Smith, supporting the act, said that once there has been a grant for condemnation it is never returned to the original landowners but remains with the condemnation people.

Mr. Corette said that this was an overall bill for condemnation, but does not include highways, the largest condemner of land. He felt this would make eminent domain procedures more cumbersome, expensive, and time consuming. He felt that the landowner was already protected under Article II, section 29 of the constitution, and sees no need for the bill. This act would tie up the needed land to build lines

surplus water to industries, and Montana would lose all the benefits to the reservoirs. Another effect of the bill would be if a person wanted to stop coal gasification, all he would have to do is refuse to sell. Water rights could be condemned by another condemnor if they had higher public priority. He submitted a brief on a constitutional argument on the bill.

Mr. Corette, also opposing the bill, felt that the material concerning section 70-803 in the bill on page 3, lines 15 and 16, and page 4, lines 8 through 10 should be omitted, since this was already covered in another bill. He felt that in limiting use only to the public, and agriculture, they would not let water flow into the next state.

Mr. Phillips said that eminent domain should balance needs of those of the society and those of the individual. He felt this bill would allow one person to obstruct those needs of the society.

Representative Brown, supporting the bill, said that the power of eminent domain is already vested in the government. The question is when and how should the legislature exercise these powers. This pertains to small landowners and water speculators who would sell to coal developers.

1009--Witnesses: Representative Bardanouve
Ted Doney, Natural Resources Council

Representative Bardanouve said that this bill corresponds with HB 965. This bill addresses itself to a smaller range than 965.

Mr. Doney said this bill would clear up disputes between landowners.

The committee discussed the following bills:

HB 726--Senator Harrison said that this bill was objectionable, in that it would put the Department of Administration in a position of legal advise, and would be able to have a bond referred to their committee for review.

SENATOR HARRISON MOVED THIS BILL BE NOT CONCURRED IN, SECONDED BY SENATOR TURNAGE. MOTION CARRIED UNANIMOUSLY.

HB 818--Senator Gilfeather conferred with Judge Blumberg and they found the bill satisfactory.

SENATOR GILFEATHER MOVED THIS BILL BE CONCURRED IN, SECONDED BY SENATOR HARRISON. MOTION CARRIED UNANIMOUSLY.

No further business the meeting was adjourned to reconvene Thursday on adjournment, February 28.

LUKE MCKEON, Chairman

ROLL CALL

SENATE JUDICIARY COMMITTEE

SECOND HALF - 43rd LEGISLATIVE SESSION 1974 Dat 2-28

NAME	PRESENT	ABSENT	EXCUSED
Luke McKeon	✓		
Pat Gilfeather	✓		
Paul Boylan	✓		
Mrs. Boots Hall			✓
Miles Romney	✓		
Glenn Drake	✓		
Tom Harrison	✓		
Jim Moore	✓		
Jean Turnage	✓		

Each day attach to minutes

DATE 2-28

COMMITTEE ON Judiciary BILL NO. _____

VISITOR'S REGISTER

NAME	REPRESENTING	BILL NO	Check One: Support	Check One: Oppose
Linda Bishop	[illegible]			
Bill Eachon	[illegible]			
Henry Lohmann	[illegible]	1101	X	
Jan Lech	Dept of Hl	965		
Ted [illegible]	Dept. Nat. Res.	1009 965	X	
Jim Burnham	Mountain Bell	965		X
Gene Phillips	Pacific Power & Lt	1101 965 1009		X
Pat Corette	Montana [illegible]	[illegible] 965		X
Pat Corette	Montana [illegible]	1101	[illegible]	X
Pat Corette	Montana [illegible]	1009	X	
Lester H Lobe, II	Mont. Dakota Utl.	HB 965		X
Lester H Lobe, II	Intake Water Co.	HB 1101		X
Bob Brown	Dist #16	1101	X	
THOMAS W. MONFORTON	NATIONAL FARMERS [illegible]	1101	X	
Henry J. Schaefers	Sponsor	1101	X	
Kyle Mueller	Northern Plains Res. Council	1101	X	
Donald E Bertness	Colstrip Bellevue	1054	X	
Patsy Slothower	Northern Plains Resource Council	965 1009	X	
Steve Charter	Broadview Landowner	1009 965	X	
J. Driscoll	Self	965-1009	X	
Paul Smith	Mont Stockmen	965-1101	X	

MINTUES OF THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE SENATE

March 6, 1974

The meeting was called to order by Senator McKeon, Chairman, at 11:00 a.m. in Room 442 of the Capitol Building.

THE FOLLOWING BILL WAS HEARD: HB 866

HB 866--Witnesses appearing on the bill:

Rep. Dan Yardley, Livingston
Carron C. Blend, Supt. of Public Instruction

Rep. Yardley, sponsor, said that on an adverse appeal in a school matter, this bill would allow additional information to be obtained. This information would be obtained by an affidavit. This bill also places a 60-day limitation on the appeal, which gives finality to the superintendent's decision. This jurisdiction is not in the present law. Mr. Blend spoke in support of the bill.

SENATOR TURNAGE MOVED THIS BILL BE CONCURRED IN; SECONDED BY SENATOR GILFEATHER. MOTION CARRIED UNANIMOUSLY.

THE COMMITTEE DISCUSSED THE FOLLOWING BILLS:

HB 160	HB 721	HB 1017
HB 473	HB 875	HB 1024
HB 528	HB 901	HB 1035
HB 542	HB 943	HB 1090
HB 672	HB 965	HB 1101
HB 682	HB 999	SJR 69
HB 719	HB 1003	HJR 66
HB 720	HB 1009	

HB 160--SENATOR DRAKE MOVED THIS BILL BE NOT CONCURRED IN; SECONDED BY SENATOR HARRISON. MOTION CARRIED UNaNIMOUSLY.

HB 473--Senator Turnage introduced amendments to the bill which deleted all the material after the enacting clause, and inserted new material as per standing committee report.

SENATOR DRAKE MOVED THE AMENDMENTS BE CONCURRED IN; SECONDED BY SENATOR TURNAGE. MOTION CARRIED UNANIMOUSLY.

SENATOR TURNAGE MOVED THE BILL BE CONCURRED IN AS AMENDED; SECONDED BY SENATOR DRAKE. MOTION CARRIED UNANIMOUSLY.

HB 528--SENATOR TURNAGE MOVED THIS BILL BE NOT CONCURRED IN, UNDER THE STIPULATION THAT IT BE PLACED INTO AN INTERIM STUDY BY WAY OF A RESOLUTION; SENATOR DRAKE SECONDED. MOTION CARRIED UNANIMOUSLY.

HB 901--SENATOR BOYLAN MOVED THIS BILL BE NOT CONCURRED IN; SECONDED BY SENATOR ROMNEY. MOTION CARRIED UNANIMOUSLY.

HB 943--SENATOR BOYLAN MOVED THIS BILL BE NOT CONCURRED IN; SECONDED BY SENATOR DRAKE. MOTION CARRIED UNANIMOUSLY.

HB 965--Senator Turnage said that this bill had some geographic problems. He said that it would have to comply with all local requirements before they would be able to condemn the land on state standards. He said he would agree with uniform standards, and felt that this was not uniform.

SENATOR HARRISON MOVED THIS BILL BE NOT CONCURRED IN; SECONDED BY SENATOR TURNAGE. MOTION CARRIED.

HB 999--SENATOR TURNAGE MOVED TO AMEND SS 2, PAGE 9, LINE 9, BY STRIKING SS 2 IN ITS ENTIRETY; SENATOR DRAKE SECONDED. MOTION CARRIED. He did not feel the child should be held responsible for giving misinformation if he didn't really know what he was talking about.

SENATOR DRAKE MOVED TO AMEND SS 4, PAGE 3, LINES 15-23 BY STRIKING THIS SECTION IN ITS ENTIRETY; SECONDED BY SENATOR TURNAGE. MOTION CARRIED.

SENATOR TURNAGE MOVED THIS BE CONCURRED IN AS AMENDED. SECONDED BY SENATOR DRAKE. MOTION CARRIED.

HB 1003--SENATOR DRAKE MOVED THIS BILL BE CONCURRED IN; SECONDED BY SEANTOR BOYLAN. MOTION CARRIED UNANIMOUSLY.

HB 1009--SENATOR TURNAGE MOVED THIS BILL BE CONCURRED IN; SECONDED BY SENATOR HARRISON. MOTION CARRIED UNANIMOUSLY.

HB 1017--Senator Turnage said that he still had a question on the "grandfather clause". Senator McNamer questioned the acreage limitation, and the general concensus of the Committee was to set it at less than 20 acres.

The Committee recommended to hold the bill pending amendments.

HB 1024--SENATOR HARRISON MOVED THAT THIS BILL BE NOT CONCURRED IN, UNDER THE STIPULATION THAT IT BE PLACED INTO AN INTERIM STUDY BY WAY OF A RESOLUTION; SENATOR DRAKE SECONDED. MOTION CARRIED UNANIMOUSLY.

HB 1035--HOLD IN COMMITTEE

HB 1090--SENATOR DRAKE MOVED THIS BILL BE NOT OCNCURRED IN; SECONDED BY SENATOR HARRISON. MOTION CARRIED UNANIMOUSLY.

HB 1101--SENATOR GILFEATHER MOVED THIS BILL BE CONCURRED IN; SECONDED BY SENATOR HALL. MOTION FAILED

SENATOR TURNAGE MOVED THIS BILL BE NOT CONCURRED IN; SECONDED BY SENATOR HARRISON. MOTION CARRIED.

ROLL CALL

SENATE JUDICIARY COMMITTEE

SECOND HALF - 43rd LEGISLATIVE SESSION 1974 Date 3/6
11 a.m

NAME	PRESENT	ABSENT	EXCUSED
Luke McKeon	✓		
Pat Gilfeather	✓		
Paul Boylan	✓		
Mrs. Boots Hall	(late) ✓		
Miles Romney	✓		
Glenn Drake	✓		
Tom Harrison	✓		
Jim Moore			✓
Jean Turnage	(late) ✓		

Each day attach to minutes

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Fifty-third Legislative Day 3-8-74

Ayes: Aber, Bennett, Bertsche, Bollinger, Boylan, Breeden, Broeder, Carl, Darrow, Deschamps, Devine, Drake, Flynn, Gilfeather, Goodheart, Graham, Hall, Harrison, Hazelbaker, Himsl, James, Jensen, Keenan, Klindt, Lowe, Lynch, Manning, Mathers, McCallum, McDonald, McGowan, McKeon, McNamer, Moore, Moritz, Nees, Northey, Romney, Rosell, Shea, Siderius, Sorensen, Story, Thiessen, Turnage, Vainio, Zody, Mr. President. Total 48.

Noes: None.

Absent and not voting: None.

Excused: Cochrane, DeWolfe. Total 2.

House Bill No. 1009, having been read three several times, was concurred in by the following roll call vote:

Ayes: Aber, Bennett, Bertsche, Bollinger, Boylan, Breeden, Broeder, Carl, Darrow, Deschamps, Devine, Drake, Flynn, Gilfeather, Goodheart, Graham, Hall, Harrison, Hazelbaker, Himsl, James, Jensen, Keenan, Klindt, Lowe, Manning, Mathers, McCallum, McDonald, McGowan, McKeon, McNamer, Moore, Moritz, Nees, Northey, Romney, Rosell, Shea, Siderius, Sorensen, Story, Thiessen, Turnage, Vainio, Zody, Mr. President. Total 47.

Noes: None.

Absent and not voting: Lynch. Total 1.

Excused: Cochrane, DeWolfe. Total 2.

Senator Lynch moved that the Senate stand in recess until the hour of 4:30 p.m. this Legislative Day. Motion carried.

Senate recessed.

Senate resumed.

Senator Lynch requested a Call of the Senate, and there being sufficient seconds, the President ordered a Call of the Senate. Thereafter, progress having been shown, Senator Mathers moved that the Call of the Senate be dispensed with. Motion carried.

BUSINESS ON SECOND READING

Upon the motion of Senator Lynch, duly carried, the Senate resolved itself into a Committee of the Whole for the consideration of Business on Second Reading.

Senator McKeon in the Chair. Committee arose.

Senate resumed. President McOmber presiding.

The Committee of the Whole submitted the following report:

Mr. President: We, your Committee of the Whole, having had under consideration Business on Second Reading, respectfully report and recommend as follows:

That House Bill No. 632 be indefinitely postponed. Opposed by Aber, Bennett, Breeden, Broeder, Carl, Cochrane, Deschamps, Drake, Harrison, Hazelbaker, Klindt, Lowe, Mathers, McCallum, McDonald, McNamer, Moore, Moritz, Northey, Rosell, Story, Turnage, Himsl.

That House Bill No. 867 be concurred in. Unanimously concurred in.

That House Bill No. 1010 be amended in Section 4 by omitting the underlined material added by the Senate Committee on Natural Resources Amendments dated March 6, 1974, and inserting in lieu thereof the following new material:

"(3) The board shall adopt rules requiring every person who proposes to gather geological data by boring of test holes or other underground exploration, investigation, or experimentation, related to the possible future development of an underground utility facility employing geothermal resources, to comply with the following requirements:

PROPOSITION

Shall a levy be made in addition to the levies authorized by law in such number of mills as may be necessary to raise the sum of (state the amount to be raised by additional tax levy), and being approximately (give number) mills, for the purpose of (insert the purpose for which the additional tax levy is made)?

☐ FOR the additional levy.

☐ AGAINST the additional levy.

If the election on any additional levy for the general fund is approved by a majority vote of those electors voting at such election, the proposition shall carry and the trustees may use any portion or all of the authorized amount in adopting the preliminary general fund budget. The trustees shall certify the additional levy amount authorized by such a special election on the budget form that is submitted to the county superintendent and the county commissioners shall levy such number of mills on the taxable value of all taxable property within the district as prescribed in section 75-6926, as are required to raise the amount of such additional levy.

Authorization to levy an additional tax under the provisions of this section shall be effective for only one (1) school fiscal year and shall be authorized by a special election conducted before the first day of August of the school fiscal year for which it is effective. Only one such additional levy for the maintenance and operation of the school programs of a high school district may be imposed by a high school district in a given school fiscal year."

Approved March 16, 1974

CHAPTER NO. 231

AN ACT AMENDING SECTION 70-803, R.C.M. 1947, TO INCLUDE THE COMMENCEMENT OF EMINENT DOMAIN PROCEEDINGS WITHIN THE MEANING OF COMMENCE TO CONSTRUCT IN THE UTILITY SITING ACT; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-803, R.C.M. 1947, is amended to read as follows:

"70-803. **Definitions.** The following words, when used in this act, shall have the following meanings unless otherwise clearly apparent from the context:

(1) the word "department" means the department of natural resources and conservation.

(2) the word "board" means the board of natural resources and conservation.

(3) the words "utility facility" or "facility" mean:

(a) any energy generating and conversion plant and associated facilities

(i) designed for, or capable of, generating at fifty (50) megawatts of electricity or more or any addition thereto (except pollution control facilities approved by the department of health and environmental sciences added to an existing plant) having an estimated cost in excess of two hundred fifty thousand dollars ($250,000), or

(ii) designed for, or capable of, producing one hundred million (100,000,000) cubic feet of gas per day or more or any addition thereto having an estimated cost in excess of two hundred fifty thousand dollars ($250,000), or

(iii) designed for, or capable of, producing fifty thousand (50,000) barrels of liquid hydrocarbon products per day or more or any addition thereto having an estimated cost in excess of two hundred fifty thousand dollars ($250,000), or

(iv) designed for or capable of enriching uranium minerals;

(b) an electric transmission line and associated facilities of a design capacity of thirty-four and one-half (34.5) kilovolts or more, except that the following transmission lines and associated facilities shall be subject to certain exceptions under the act:

(i) a transmission line and associated facilities with a design capacity of sixty-nine (69) kilovolts or less and which will be constructed above ground for a distance of ten (10) miles or less shall not be considered a utility facility within the definitions of this act,

(ii) a transmission line and associated facilities with a design capacity of one hundred sixty-one (161) kilovolts or less and which will be constructed underground for a distance of five (5) miles or less shall not be considered a utility facility within the definitions of this act,

(iii) a transmission line or associated facilities of a design capacity of one hundred sixty-one (161) kilovolts or less which does not meet the requirements of subsections (i) and (ii) of this subsection shall be subject to the specific time review requirements for transmission lines in section 6, subsection (1) [70-806(1)] and section 7, subsection (1) [70-807(1)] of this act if the proposed length of the transmission line will not exceed thirty (30) miles,

(iv) unless specifically covered by subsections (i), (ii) or (iii) of this subsection, the construction of all transmission lines and associated facilities shall be subject to the two (2) year time requirement of section 6, subsection (1) [70-806(1)], and the six hundred (600) day requirement of section 7, subsection (1) [70-807(1)],

(v) the provisions of subsections (i) and (ii) of this subsection shall not be construed as authorizing the simultaneous construction of two (2) or more transmission lines serving the same community or customer which would, when constructed separately, come within the exceptions of subsections (i) and (ii);

(c) a gas or liquid transmission line and associated facilities designed for, or capable of, transporting gas or liquid hydrocarbon products from a gasification or liquefaction facility of the size indicated in subsections (a) (ii) and (a) (iii) of this section.

(4) the words "associated facilities" include, but are not limited to, transportation links of any kind, aqueducts, diversion dams and any other device or equipment associated with the production, or delivery of the energy form produced by a facility.

(5) the words "commence to construct" mean any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a utility facility, but do not include changes needed for temporary use of sites or routes for nonutility purposes, or uses in securing geological data, including necessary borings to ascertain foundation conditions. *The words do include the commencement of eminent domain proceedings under Title 93, chapter 99, R.C.M. 1947, for land or rights-of-way upon which a utility facility may be constructed.*

(6) the word "municipality" means any county or municipality within this state.

(7) the word "person" includes any individual, group, firm, partnership, corporation, co-operative, association, government subdivision, government agency, local government, or other organization.

(8) the words "public utility" or "utility" mean any person engaged in any aspect of the production, storage, sale, delivery or furnishing of heat, electricity, gas, or energy in any form for ultimate public use.

(9) "certificate" means the certificate of environmental compatibility and public need issued by the board and required for the construction or operation of any facility."

Section 2. This act is effective on its passage and approval.

Approved March 16, 1974

CHAPTER NO. 232

AN ACT AMENDING SECTIONS 66-2601, 66-2602, 66-2608, 66-2609, AND 82A-1606, R.C.M. 1947; CHANGING SOME PORTIONS OF THE DEFINITION OF "WATER WELL"; CHANGING THE COMPOSITION OF THE WATER WELL CONTRACTOR'S EXAMINING BOARD; INCREASING REQUIREMENTS FOR LICENSING AS A WATER WELL CONTRACTOR; AND CHANGING BONDING PROVISIONS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 66-2601, R.C.M. 1947, is amended to read as follows: